

*United States Court of Appeals  
for the Second Circuit*



**BRIEF FOR  
APPELLANT**



76-7233 *B*

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

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Docket No. 76-7233

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PRESSURE SCIENCE INCORPORATED,  
*Plaintiff—Appellant,*  
vs.

DAVID KRAMER AND THE ADVANCED PRODUCTS COMPANY  
*Defendants—Appellees.*

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On Appeal From The United States District  
Court For The District Of Connecticut

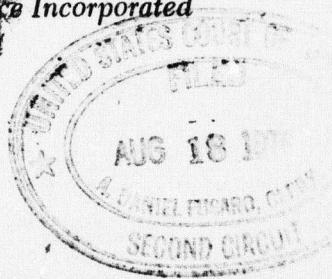
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BRIEF OF PLAINTIFF—APPELLANT

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## ABBREVIATIONS USED

“AF” represents plaintiff’s proposed findings of fact to which the defendants stipulated agreement.

“APX” represents defendant Advanced Products’ exhibit.

“F” represents a finding contained in the District Court’s memorandum of decision.

“JA” represents joint appendix.

“MD” represents the District Court’s memorandum of decision.

“PX” represents plaintiff’s exhibit.

“RA” represents plaintiff’s request for admission.

“T” represents trial transcript.

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BRIEF OF PLAINTIFF—APPELLANT

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PRELIMINARY SETTLEMENT

This is an appeal from an unreported decision and judgment denying plaintiff's trade secret claims and dismissing plaintiff's complaint, which was tried to the court *in camera* before Honorable Robert C. Zampano, United States District Judge.

STATEMENT OF ISSUES

In a civil action brought to enjoin defendants from further disclosure and use of plaintiff's trade secrets:

1. Did the District Court err in concluding that plaintiff's C-seal die was not a trade secret, where there was no evi-

dence that the design of plaintiff's die was common knowledge and there was no evidence that any third party had ever used a similar die?

2. Did the District Court err in applying the patent-analogy "good mechanic" defense in a trade secret action, when that defense had been expressly discredited by this Court and the District Court in previous trade secret cases?

3. Did the District Court err in finding that defendant Advanced Products had knowledge of plaintiff's die prior to defendant Kramer's employment, where Advanced Products failed to prove such prior knowledge beyond a reasonable doubt?

4. Did the District Court err in finding that defendant Kramer did not reveal any of plaintiff's trade secrets to defendant Advanced Products?

5. Did the District Court err by excluding evidence of a prior civil action brought against defendant Kramer by the Raytheon Company for conversion of certain of that company's proprietary materials, where such evidence was offered to show that Kramer had not divulged plaintiff's trade secret by mistake or accident?

## STATEMENT OF THE CASE

### I.

#### NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW.

Plaintiff Pressure Science Incorporated ("Pressure Science"), a Maryland corporation, brought this diversity action in December, 1973 against David Kramer ("Kramer"), a resident of Connecticut, and The Advanced Products Company ("Ad-

vanced Products"), a Connecticut corporation. Pressure Science claimed that Kramer, a former employee, had revealed plaintiff's trade secrets, including the method of production of a metal seal known as the "C-seal," to Advanced Products in violation of a confidential relationship which existed between plaintiff and Kramer, and that Advanced Products had wrongfully appropriated such trade secrets for its benefit. In an additional count of the complaint, plaintiff sought damages against Kramer based upon its claim that Kramer had obtained employment at Pressure Science by means of fraudulent misrepresentations and that he was not capable of performing the duties for which he had been hired. The defendants denied the material allegations of the complaint, and Advanced Products filed counterclaims based on alleged antitrust violations and vexatious litigation. Plaintiff denied the material allegations of the counterclaims.

Plaintiff sought preliminary injunctions against both defendants on the trade secret counts. On February 11, 1974, the date scheduled for a hearing on plaintiff's motion, the Court, during a chambers conference, suggested that the trial be advanced and consolidated with the hearing on plaintiff's motion pursuant to Rule 65(a)(2), Fed. R. Civ. P. The parties agreed, and thereafter, when no trial date was announced, plaintiff filed a request for early trial of the trade secret counts on June 25, 1974. The case was pre-tied on February 25, 1975, and trial date was set for March 25, 1975.

Prior to commencement of trial, plaintiff successfully moved for severance of the fraud count against Kramer. The Court also severed Advanced Products' antitrust counterclaim and decided to bifurcate trial of the trade secret counts, holding the question of relief in abeyance until after the issue of liability had been decided.

The trade secret claims and Advanced Products' vexatious litigation counterclaim were tried before Judge Zampano during the period of March 25 to May 7, 1975. Thereafter, the parties filed their proposed findings of fact, stipulation as to agreed findings, and briefs. Oral argument was held on September 16, 1975, at the close of which Judge Zampano made certain comments for the record, indicating that he considered plaintiff's die to be a trade secret. On April 15, 1976, the Court's memorandum of decision, containing findings of fact and conclusions of law, was filed. The Court concluded that plaintiff had proved none of its trade secret claims, and judgment was entered on April 19, 1976 dismissing plaintiff's complaint. The Court also found that Advanced Products had failed to prove its vexatious litigation counterclaim, and judgment was entered accordingly. Plaintiff's notice of appeal was filed on May 12, 1976.

## II.

### STATEMENT OF FACTS.

#### A. Nature Of Plaintiff's Trade Secret Claims.

Pressure Science, a Maryland corporation located in Beltsville, Maryland, was formed in 195<sup>6</sup> 30 by Dudley Taylor, its president, primarily to develop a precision formed metal seal known as a "C-seal." The company presently has about ninety employees. Metal seals are in great demand in the aircraft engine industry, and are normally installed in the recess between two flanges in a piece of equipment in order to provide a leak-proof seal at the flange joint. For the most part, such seals are round, but they are currently produced in a variety of cross-sectional configurations including an "O" shape, a "C" shape, an "E" shape, and a "V" shape. (JA 19a, 21a; MD, F 1, 4, 5, 13, 14, 15.)

Taylor originated the C-seal in 1956 by cutting out ("machining") a sector from a metal O-ring (a doughnut-shaped, hollow metal seal). Taylor then conceived the idea that a C-seal could be produced by die-forming rather than by the more expensive machining method. In the late 1950's, Taylor tried to form a marketable C-seal by die-forming techniques known as "rubber press forming" and "curling." However, such methods proved inefficient. In 1961, Taylor developed a four-piece die to form C-seals. Although this was an improvement over earlier dies, there were still significant disadvantages to the four-piece die, including fragility and cost. Finally, in 1965, Taylor developed the two-piece C-seal die (See PX 35.) which is currently used by Pressure Science to form the bulk of its C-seals. Pressure Science produces its C-seal dies at a cost of about \$60 per die. (JA 22a-24a; MD, F 19, 20, 21e.)

Production of C-seals is an important part of plaintiff's business, and during the early 1970's, major customers in the aircraft industry such as Pratt & Whitney began increasingly to purchase C-seals from plaintiff in preference to metal O-rings for use in their products. (JA 19a, 26a-27a; MD, F 4, 5, 31.)

C-seals are normally made to order, and it is very common for Pressure Science to receive an order for a particular size C-seal and never again receive an order for that size. Manufacturing runs for C-seals are relatively small, and Pressure Science must be able to cope with a ten-piece order. Plaintiff's average C-seal order is about fifty pieces. (JA 70a-71a, 126a-127a; T 60, 718.)

Plaintiff's method of producing a C-seal consists of several steps: first, a narrow strip of metal is cut and welded in a circular shape, in a welding hold-down device designed by

Pressure Science, to form the "slug" or "hoop." The weld is then "mashed" and smoothed to provide the slug with a uniform thickness. The slug is next given a slight preform by means of rollers. Then the round slug is formed into the C cross-sectional configuration, principally by means of the two-piece die developed by Taylor. (About 5% of plaintiff's larger C-seals are formed by rollers.) After forming, the C-seal is "pulsed" to relieve residual stresses in the metal, polished, heat-treated, electroplated and packaged. (JA 23a-25a; MD, F 21.)

At trial, plaintiff maintained that its entire C-seal production process was a trade secret. The District Court found that no part of the process was a trade secret. (JA 35a; MD, F 68, 69.) For the purpose of this appeal, plaintiff is limiting its trade secret claims of error to the District Court's findings with respect to the two-piece die.

#### **B. Nature Of Defendant Advanced Products' Business.**

Advanced Products, a Connecticut corporation located in North Haven, Connecticut, was formed in 1954 by Harvey Sommer, its president, and Arthur Hostage, its vice-president, among others. Advanced Products currently has about sixty employees. The company concentrated on the manufacture of metal O-ring seals and is one of the largest O-ring producers in the world. The process for manufacturing metal O-ring seals is widely known in the metal seals trade, and Advanced Products makes no proprietary claims with respect to the manufacture of its metal O-rings. (JA 19a, 20a, 21a-22a; MD, F 3, 10, 16, 17.)

In the early 1960's, Advanced Products attempted to buy Pressure Science because the company was interested in the Pressure Science C-seal. However, this attempt was unsuccessful. (JA 54a; AF 263.)

In addition to the metal O-ring, other seals manufactured by Advanced Products include the clam seal and the lo-load seal. None of these seals is die-formed. (JA 54a; AF 264.)

### **C. Defendant Kramer's Relationship With Pressure Science And Subsequent Employment At Advanced Products.**

Kramer, now a citizen of Connecticut, was hired by Pressure Science in November 1971 as production manager at a salary of \$25,000. In applying for employment, Kramer had represented to Pressure Science that he was a graduate of the Massachusetts Institute of Technology and that he held a master's degree in metallurgy from Columbia University. During his employment at Pressure Science, Kramer ranked third or fourth in the corporate hierarchy, was a member of the company's operating committee, and was privy to policy-making decisions in the company. He was involved in every aspect of plaintiff's business on a daily basis and became familiar with the entire process by which Pressure Science manufactures C-seals. On May 26, 1973, Kramer was terminated by Pressure Science on the grounds that the company was dissatisfied with his job performance and because it had learned that Kramer had misrepresented his background and academic credentials. (JA 19a-20a, 74a-76a, 201a; MD, F 2, 6, 7, 8; T 142-44, 1049.)

Around the middle of May, 1973, Kramer telephoned Sommer, president of Advanced Products, identified himself as

production manager at Pressure Science and indicated that he was seeking new employment. Kramer was invited to visit Advanced Products on May 22. At the May 22 meeting, Kramer discussed his responsibilities and duties at Pressure Science, and told Sommer that he knew the complete process of everything Pressure Science made. Following a second interview at Advanced Products on June 1, 1973, Kramer was hired at a salary of \$22,000. Prior to offering Kramer employment, Advanced Products did not check Kramer's background or check with Pressure Science about his performance there or the circumstances of his leaving. (JA 28a, 29a, 54a; MD, F 36, 37, 40, 41; AF 251, 254.)

Kramer began work at Advanced Products on June 18, 1973. He was hired as a project engineer to be in charge of manufacturing C-seals for Advanced Products. Kramer was the first employee devoted full-time to the C-seal business at Advanced Products. Prior to hiring Kramer, Advanced Products had not produced any C-seals by forming; although the company had produced C-seals upon special request by machining away sectors from metal O-rings, a technique similar to the one first used by Taylor in 1956. (JA 29a, 20a, 22a-23a, 54a; MD, F 42, 11, 18, 19; AF 235, 241.)

The first formed C-seal that was produced at Advanced Products was made under Kramer's direction. Kramer designed Advanced Products' first C-seal die in September of 1973, and had designed eighty or ninety additional C-seal dies for Advanced Products by the spring of 1975. (JA 55a, 208a, 211a-212a; AF 265; T 1090, 1093-94.) (Note: it will be helpful here to compare PX 35, a Pressure Science die, with PX 72, an early Advanced Products die designed by Kramer.)

At the time he left Pressure Science, Kramer was not aware of any other seal manufacturer using a process similar to Pressure Science's for producing C-seals. While at Advanced Products, Kramer supervised production of C-seals for seventeen months. Advanced Products is now using a precision metal forming process to produce C-seals similar to the one used by Pressure Science. (JA 53a; AF 206, 230, 232.)

At trial, Kramer claimed that while he was employed by Pressure Science no one had expressly told him that plaintiff's C-seal process was confidential and that he therefore made an assumption that the process was not confidential. Plaintiff's attempts to show the unreasonableness of Kramer's claim by introducing evidence that he had been previously sued by the Raytheon Company for conversion of certain of Raytheon's proprietary materials met with an objection by Kramer's counsel on the ground that such evidence was irrelevant. The objection was sustained. (JA 186a-188a, 190a, 195a-200a, 203a-205a, 49a-51a; T 1026-28, 1030, 1035-40, 1066-68; RA 47, 51.)

#### **D. Secrecy Of The Pressure Science C-seal Die And Advanced Products' Awareness Of Plaintiff's Proprietary Claims.**

Detailed knowledge of the Pressure Science C-seal process is limited to twelve employees. Some tours of the Pressure Science plant were conducted while the plant was in operation. However, such tours were conducted by supervisory personnel and, as a general rule, visitors could not obtain a detailed view of the procedures employed by Pressure Science to make C-seals. Pressure Science frequently sends out C-seal drawings to customers; however, such drawings do not con-

tain any information considered proprietary to the company. The Pressure Science plant is located in a relatively secluded area in Beltsville, Maryland. (JA 138a-139a, 25a, 52a, 38a; T 894-95; MD, F 23, 25; AF 43; MD at 21.)

Plaintiff's advertisements for C-seals refer to them as being made by "Taylor's exclusive economical process." At trial, Sommer, president of Advanced Products, admitted that he had seen the phrase "exclusive process" in Pressure Science ads. Hostage, vice-president of Advanced Products, admitted that he was aware that the ads referred to a proprietary or exclusive process, but stated that he did not "believe" such claim. (JA 25a-26a, 230a-231a, 391a; MD, F 26; T 1223-24, 2225.)

Aside from the facts which gave rise to this action, there was no evidence of any occasion when Pressure Science confidential information was improperly divulged to another party.

#### **E. Defendant Advanced Products' Efforts To Develop A Formed C-seal.**

In 1972 Advanced Products noted that the demand for plaintiff's C-seals was increasing, at the expense of Advanced Products' O-ring sales. By early 1973, discussions were taking place among Advanced Products engineers concerning various methods of producing a formed C-seal. On May 31, 1973, Bernard Sniegowski, quality control manager and engineer at Advanced Products, sent a memorandum to Sommer entitled "General Comments on "C" Seal Forming Methods." (See APX R, JA 595a-599a.) The memorandum was a collection of "some random ideas for consideration." Sommer did nothing with the memorandum and relieved Sniegowski of primary

responsibility for the company's new venture into the C-seal business because of Sniegowski's other duties, because Sommer disagreed with Sniegowski's preference for rubber press forming (the technique used by Taylor in the late 1950's), and because of Kramer's appearance on the scene seeking employment. Kramer never even saw Sniegowski's memorandum until after this action was brought in December, 1973. (JA 26a-28a, 53a, 595a-599a; MD, F 31, 32, 33, 34; AF 231; APX R.)

At the time Kramer was hired to produce formed C-seals for Advanced Products, that company's efforts in the C-seal area had not advanced beyond the discussion stage. According to Sommer, at the time Sniegowski prepared his memorandum "[n]othing had been decided" with respect to Advanced Products' proposed C-seal venture. (JA 260a-261a, 277a-278a; T 1362-63; 1474-75.)

In September of 1973, approximately three months after he was hired by Advanced Products, Kramer produced the company's first formed C-seal. Advanced Products' sales of C-seals were \$3,300 in 1973; \$33,000 in 1974; and were estimated at \$66,000 in 1975. (JA 54a, 55a, 29a; AF 256, 265; MD, F 42.)

Advanced Products is now using a precision metal forming process to produce C-seals similar to the one used by Pressure Science to produce its C-seals. Sommer knows of no other company in the United States using a similar process to make C-seals. (JA 53a, 55a; AF 232, 275.)

### F. Defendants' Claim That The Die Design Was Common Knowledge, And The "Good Mechanic" Defense.

After this action was brought, Advanced Products instituted an extensive research effort designed to show that the Pressure Science C-seal process was common knowledge. Yet, excerpts from the pertinent literature produced by Advanced Products revealed no die similar to the Pressure Science die. (JA 280a-282a, 617a, 600a-610a, 611a-616a; T 1481-83; APX II; PX 40-46; APX AD, AE, BL.)

Advanced Products also called two expert witnesses, Edward Barton and George Merwin, who testified essentially that the Pressure Science die was a simple device which they would have been able to design, had they been asked, at an estimated price range of from \$100 to \$300 per die. However, neither Barton nor Merwin had ever tried or been asked to design a similar die. Prior to testifying, Merwin had observed C-seals being made at the Advanced Products plant, and Barton had also seen the die. None of the four exhibits introduced as representative of Barton's and Merwin's work was a seal. Moreover, three of those exhibits were made on complex progressive dies, which are unsuitable for forming C-seals. Barton also stated that he thought knowledge of a method for producing C-seal dies at a cost of around \$50 per die was worth keeping confidential. (JA 33a-34a, 55a, 531a, 578a-582a, 482a-483a; MD, F 58, 59; AF 336, 345; T 2374; *see* APX CO, CP, CU, CV; T 2462-65, 2322-23.)

## SUMMARY OF ARGUMENT

Plaintiff developed a special die which it incorporated into a process used to manufacture the formed C-seal, a product developed by plaintiff. There was no evidence that any other person knew of or used this die until defendant Kramer, a former high-level employee of plaintiff, produced such a die for defendant Advanced Products, thereby enabling Advanced Products to produce formed C-seals. The Trial Court found that the die, among the other elements of plaintiff's C-seal process, was known or used by others in the metal trade industry and therefore was not a trade secret.

Plaintiff's arguments are:

- I. There was no evidence to support a finding by the Trial Court that the design of plaintiff's die was common knowledge or that it was known in the metal seal industry; and it was error for the Trial Court to apply the patent-analogy concepts of novelty and the "good mechanic" defense in support of its findings that plaintiff's die was not a trade secret.
- II. In order to show that it had knowledge of plaintiff's die design prior to hiring Kramer, Advanced Products was required to prove such prior knowledge beyond a reasonable doubt. Furthermore, Advanced Products, to succeed in this defense, was required to show reliance on innocent sources of information involving no breach of duty. Advanced Products failed to prove either aspect of this defense.
- III. The details of plaintiff's die were kept confidential and Advanced Products knew that plaintiff considered such information confidential. Advanced Products obtained plaintiff's die design for its benefit solely through Kramer's breach of a confidential relationship with plaintiff.

## ARGUMENT

### I. THE TRIAL COURT ERRED IN FINDING THAT THE DESIGN OF PLAINTIFF'S C-SEAL DIE WAS NOT A TRADE SECRET.

The Trial Court's crucial findings that plaintiff's die was known or used by others are clearly erroneous. Underlying the Trial Court's error in these findings was its use of patent-analogy concepts of novelty and the "good mechanic" defense.

#### A. The Governing Law.

As the Trial Court noted (JA 36a; MD at 19), Connecticut law provides the controlling legal principles in this diversity action. Under Connecticut conflict rules, the law of the state where a tort was committed governs the creation and extent of liability. *Teitelman v. Bloomstein*, 155 Conn. 653, 658, 236 A.2d 900 (1967). Here, the claimed breach of confidence, misappropriation of trade secrets, and substantial sales by defendant Advanced Products occurred in Connecticut.

Connecticut, as have a number of other states, has adopted the definition of a trade secret which is set forth in the Restatement of Torts §757, comment b (1939). The provision reads, in pertinent part, as follows:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. . . . A trade secret is a process or device for continuous use in the operation of the business.

*Allen Mfg. Co. v. Loika*, 145 Conn. 509, 516, 144 A.2d 306 (1958).

**B. The Trial Court's Finding That Plaintiff's C-seal Die Was Known Or Used By Others In The Metal Trade Industry Is Clearly Erroneous.**

With respect to plaintiff's C-seal die, the Trial Court found that it was not a trade secret because it, among other items in plaintiff's C-seal process, was "known by others or used by others in the metal trade business and tool and die industry." (JA 34a, 35a; MD, F 60, 68, 69.) The law is clear that matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318, 189 A.2d 390 (1963).

On the evidence adduced by the defendants at trial, it was not reasonably possible for the Trial Court to find that plaintiff's die design was a matter of general knowledge in the metal seal industry or the tool and die industry. There was no evidence that anyone other than plaintiff and defendant Advanced Products ever used such a die. Moreover, none of the exhibits produced by the defendants from literature on metal forming (JA 600a-610a, 611a-616a; PX 40-46; APX AD, AE, BL.) revealed the design of plaintiff's die. However, even had the design of plaintiff's die been disclosed by prior art, plaintiff's use of it in a process which produced a superior product still would enable plaintiff to claim the die as a trade secret. *Sperry Rand Corporation v. Rothlein*, 241 F. Supp. 549, 560 (D. Conn. 1964).

Considering the Trial Court's observation, made at the conclusion of oral argument after the trial, that the defendants "were scratching their heads as to how this process could be copied or duplicated" (JA 589a; Transcript of Certain Comments for the Record by the Court, at 4.), and the fact that

there was no evidence that plaintiff's die was known or used by others, it appears, from the finding that there was nothing "novel . . . or unique" about plaintiff's die (JA 34a; MD, F 60.), that the Trial Court superimposed a standard of novelty on the Restatement definition of a trade secret and based its crucial findings upon evidence that certain metal forming *concepts* employed by plaintiff's die were commonly known in the metal trade business and tool and die industry. (See, e.g., JA 38a; MD at 21.) The imposition of any such novelty requirement in a trade secret case is wrong as a matter of law. What Judge Anderson said of such a requirement in *Sperry Rand Corporation v. Rothlein, supra*, 241 F. Supp. at 560-61, is directly in point:

The defendants claim that there is no trade secret if it is disclosed by prior art or if it is readily discernible by others skilled in the field, i.e., a good mechanic, and that an employee after leaving his employer is at liberty to use for his own benefit, any information he remembers unless it is a trade secret in this patent-analogy sense. As authority for this position they rely on the case of *Sarkes Tarzian Inc. v. Audio Devices, Inc.*, 166 F. Supp. 250 (S.D. Cal. 1958). In that case the plaintiff-employer sought to enjoin the disclosure and use by former employees of secret data and production know-how utilized in the business of manufacturing certain electronic devices known as silicon rectifiers. The court found that the process was "generally known in the art," hence unprotectable.

\* \* \*

This case contradicts the definitions of trade secret in the Restatement, *supra*, and it is at odds with a line of authority that has upheld a trade secret claim while holding invalid for want of novelty a patent on the same device. [Citations omitted.]

It is contrary to the holding in *Allen Mfg. Co. v. Loika, supra*, which is the controlling authority in this case. The danger of the patent-analogy theory adopted in *Sarkes Tarzian* was forcefully stated by Judge Clarke in *Franke v. Wiltschek, supra*, 209 F.2d at page 498.

### C. The Trial Court Erred In Applying The "Good Mechanic" Defense With Respect To Plaintiff's Die

The design of plaintiff's die is simple. Bernard Sadoff an M.I.T. graduate, an engineer, and vice president in charge of sales for Pressure Science, after testifying that plaintiff's die design was not depicted in any of the relevant literature which he had examined and that, in fact, such literature recommended against the forming operations produced by plaintiff's die, further stated in response to a question by the Trial Court, that what he did not want an outside observer to know "was how simple it is, how straightforward this particular solution is." (JA 77a, 102a, 106a-108a; T 277, 450, 454-56.)

At trial, defendants called two expert witnesses, Barton and Merwin. Both had considerable experience in the tool and die industry. The purpose of their testimony, according to Advanced Products' pre-trial memorandum was to give evidence on "the general availability of various metal forming techniques with emphasis on match [sic] metal dies." (JA 48a.) Apparently, their testimony was designed to show that plaintiff's die design was common knowledge.

But, inasmuch as neither expert witness had heard of a "matched metal die" prior to this action (JA 55a; AF 335, 342.), and neither had ever attempted or been requested to make such a die (JA 55a; AF 336, 345.), their testimony was clearly insufficient to prove that plaintiff's die design

was common knowledge. Moreover, none of the four exhibits introduced as examples of Barton and Merwin's work was a metal seal. (JA 442a-443a, 524a-526a; T 2282-83, 2367-69.) And three of those exhibits were produced on complex progressive dies, which cannot be used to make C-seals. (JA 579a-580a; T 2462-63.) Additionally, when asked on cross-examination to explain the function of one of plaintiff's other C-seal dies, neither Barton nor Merwin was able to do so. (JA 458a-459a, 538a; T 2298-99, 2381.)

However, Barton also testified that he "could have" produced a C-seal die had he been asked. And in response to a question by the Trial Court, where the Court showed him plaintiff's die and asked if the die Barton could have designed would look like plaintiff's, Barton stated that it would. (JA 413a-414a; T 2253-54.) Merwin, who had viewed Advanced Products' use of the C-seal die prior to his testimony, made a similar claim. (JA 496a-497a; T 2339-40.) Although the infirmity of such testimony seems apparent, the Trial Court evidently gave great weight to Barton and Merwin's claim that they "could have" designed a die similar to plaintiff's. (JA 33a; MD, F 57, 58.) The Trial Court also apparently thought it significant, in support of its finding that the die was not a trade secret, that the "die has a very simple and basic design" and it "could be reproduced 'in a minute' by an experienced engineer who viewed it opened." (JA 39a; MD at 21.) The Trial Court, apparently reasoning that, since plaintiff's die design incorporated known *concepts* and that it could have been reproduced by experienced tool and die men, concluded that the die was not a trade secret. (JA 39a-40a; MD at 21-22.)

In so doing, the Trial Court, while not expressly using the term, applied the so-called "good mechanic" defense. This de-

fense is based on a single sentence at the end of comment b in the Restatement of Torts §757 (1939), which provides, essentially, that if the secret consists of merely mechanical improvements which a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages. In addition to not being a defense to liability, the "good mechanic" defense has met express disapproval in this Court and the District Court for the District of Connecticut. In *Franke v. Wiltschek*, 209 F.2d 493, 498-99 (2d Cir. 1953), Judge Clark said:

There may, it seems, be considerable danger in stressing in this branch of the law the assumed ability of a "good mechanic," a concept often useful in highlighting the lack of novelty of an alleged patent. Even as to patents the capability of that ubiquitous genius has been questioned and his destructive effect on the law of inventions somewhat deplored. Be that as it may, there is positive danger in resort to the same device to justify the marauding instincts of trust violators, since thereby the carefully built law of trade secrets may be destroyed as a practical matter and such business assets be left open to hijacking from all sides. In practice the complicated and novel device is likely to be patented, leaving protection of simp'ler devices wrongly exploited to this branch of the law. And since the ability of a "good mechanic" is quite an imprecise concept, its destructive potentialities in this area under the natural tendency of restrictive precedents to accumulate can be forecast. [Footnote omitted.]

The above quotation was cited with approval by Judge Anderson in *Sperry Rand Corporation v. Rothlein*, *supra*, 241 F. Supp. at 562.

With respect to the simplicity of a trade secret, the law is clear that simplicity alone does not vitiate trade secret pro-

tection. Speaking to this issue in a trade secret case where plaintiff's secret consisted of a variation of a process revealed in an expired patent, the Connecticut Supreme Court noted that, even with respect to patents:

The fact that the invention seems simple after it is made does not determine the question; if this were the rule many of the most beneficial patents would be stricken down.

*Schavoir v. American Re-Bonded Leather Co.*, 104 Conn. 472, 477, 133 A. 582 (1926), citing *Expanded Metal Co. v. Bradford*, 214 U.S. 366, 381 (1909).

What was said in *Sperry Rand Corporation v. Rothlein, supra*, 241 F. Supp. at 560, is precisely applicable to defendants' evidence concerning plaintiff's dies:

[T]here was no evidence at all that substantially the same pieces of equipment, materials and procedures had been used in substantially the same way and for substantially the same purpose by anyone. Moreover, [plaintiff's process] produced a product superior in quality to that of competitors and gave the plaintiff a distinct advantage over its competitors.

Finally, despite its willingness to fully credit the testimony of defendants' expert witnesses, the Trial Court overlooked the vital question of cost. Economical die design is particularly important, given the relatively small volume of the average C-seal order. (JA 71a, 127a; T 60, 718.) The dies that Barton or Merwin "could have" designed, at an estimated cost of \$100 to \$300 (JA 33a-34a; MD, F 59.), simply would not be competitive with plaintiff's \$60 dies. (JA 24a, 584a-585a; MD, F 21e; T 2537-38.) That Barton was conscious of the importance

of economics in this area was demonstrated by his admission that he thought knowledge of a method for producing such dies at a cost of around \$50 per die was worth keeping confidential. (JA 482a-483a; T 2322-23 )

Accordingly, the Trial Court's findings that the plaintiff's die was known by others or used by others in the metal trade business and tool and die industry (JA 35a; MD, F 69.) and was not a trade secret (JA 34a, 35a; MD, F 60, 68.) are clearly erroneous. Furthermore, it was also error for the Trial Court to base such findings on an application of the "good mechanic" defense, or on the simplicity of the die design.

**II. THE TRIAL COURT ERRED IN FINDING THAT ADVANCED PRODUCTS POSSESSED THE KNOWLEDGE TO PRODUCE FORMED C-SEALS PRIOR TO MAY 15, 1973.**

With respect to defendant Advanced Products' knowledge of a formed C-seal process prior to the date when Kramer began work, the Trial Court found that prior to May 15, 1973, Sommer had already concluded that a split die was the best way to form C-seals and that Sniegowski possessed the knowledge and experience to produce C-seals by means of such a die. (JA 32a; MD, F 52, 53.)

Such findings are not in accord with the evidence. The only physical evidence adduced at trial of Advanced Products' progress in the area of formed C-seals was Sniegowski's memorandum of "some random ideas," dated May 31, 1973. (JA 595a-599a; APX R.) But Sommer admitted that he put the memorandum aside after he read it (JA 220a-221a, 27a-28a; T 1193-94; MD, F 34.), and Advanced Products hired Kramer on June 1.

Sommer further stated that Advanced Products' efforts to produce a formed C-seal had never progressed beyond the discussion stage and admitted that "nothing had been decided" with respect to the questions raised in Sniegowski's memorandum, at the time Kramer was hired. (JA 260a-261a, 277a-278a; T 1362-63, 1474-75.)

Concerning the Trial Court's finding that Sniegowski possessed the knowledge and experience to die-form C-seals, the only support for such a finding comes from Sniegowski's vague, uncorroborated oral claim that he produced three or four C-seals on an "experimental" die in April of 1970, shortly before his termination at DSD-Magnatech. (JA 301a-304a; 318a-319a; T 1632-35, 1649-50.) Evidence of this nature is not legally sufficient to prove that Sniegowski had prior knowledge of how to make die-formed C-seals. Where a defendant claims that he knew plaintiff's secret prior to the improper disclosure, such claimed prior knowledge must be proved with the certainty required where a patent is alleged to be anticipated by a prior use. R. Ellis, *Trade Secrets* §242, at 328 (1953). In *Schreyer v. Casco Products Corp.*, 97 F. Supp. 159, 169 (D. Conn. 1951), *aff'd on this issue*, 190 F.2d 921 (2d Cir. 1951), *cert. denied* 342 U.S. 913 (1952), the court said:

"[O]ne who admittedly receives a disclosure from an inventor, proceeds thereafter to manufacture articles of similar character, and, when called to account, makes answer that he was using his own ideas and not the ideas imparted to him" should be required to sustain his defense with proof which is "clear, satisfactory, and beyond a reasonable doubt." [Citing *Hoeltke v. C. M. Kemp Manufacturing Co.*, 80 F.2d 912, 923 (4th Cir. 1936) (Parker, J.), *cert. denied* 298 U.S. 673 (1936).]

Moreover, the claim that Sniegowski knew how to die-form C-seals is inexplicable in light of Advanced Products' actions. As the Trial Court found, Sommer relieved Sniegowski of primary responsibility in the C-seal area, in part because of Sniegowski's preference for rubber press forming (JA 27a-28a; MD, F 34.), a technique Pressure Science had started with in the late 1950's. (JA 22a-23a; MD, F 19.) Sommer told the Trial Court that he did not speak with Sniegowski about C-seals after May 15, 1973 because of the possibility of Kramer's employment, and that Sniegowski "could stop wasting — not wasting his time, but he could stop spending time on this." (JA 264a-265a; T 1377-78.) The claim that Sniegowski had the requisite knowledge further raises the question of why Advanced Products was willing to hire Kramer, an unknown quantity, at a salary of \$22,000, when Sommer had told the Trial Court that, prior to hiring Kramer, Advanced Products considered that it would only need "more production people to actually do the work" in order to produce formed C-seals. (JA 241a-243a; T 1268-70.)

Finally, Sniegowski's memorandum itself (JA 595a-599a; APX R.) is a compelling refutation to the claim that he knew how to make plaintiff's die. The memorandum listed all methods and techniques for making formed C-seals that Advanced Products had been discussing prior to hiring Kramer, and it was admittedly not intended to indicate any priority or preference. (JA 55a; AF 311.) Why would Sniegowski have gone to much trouble had he known the secret of plaintiff's die? The answer is, of course, that Sniegowski did not know, as further evidenced by the confusion he demonstrated during cross-examination on the subject of why he included an unworkable forming proposal in his memorandum. (JA 379a-380a; T 2004-05.)

The Trial Court also found that Sniegowski stated that he had prepared "a completed plan to start with rubber press forming." (JA 27a; MD, F 33.) The Trial Court further noted that, prior to Kramer's employment, Advanced Products "had the split metal die technique on the drawing boards." (JA 39a; MD at 22.) With respect to the latter statement, there is no support for it anywhere in the record. As noted, Sommer admitted that Advanced Products' C-seal effort never got beyond the discussion stage prior to Kramer's employment. (JA 260a-261a; T 1362-63.) As for Sniegowski's "plan" to start with the inefficient rubber press forming technique, no such plan was ever committed to writing. (JA 381a; T 2013.) And, as Sniegowski told the Trial Court, the "very precise layouts" referred to in his memorandum were never made. (JA 339a-340a; T 1731-32.)

In addition to the Trial Court's findings 52 and 53 being clearly erroneous, they are, strictly speaking, not relevant to the issue of Advanced Products' liability since, where knowledge of a process is gained through a breach of confidence, it "is no defense to an action of this kind that the process in question could have been developed independently, without resort to information gleaned from the confidential relationship." *Imperial Chem. Indus. Ltd. v. National Distillers & Chem. Corp.*, 342 F.2d 737, 743 (2d Cir. 1965), modified on new findings 354 F.2d 459 (2d Cir. 1965); *Sperry Rand Corporation v. Rothlein, supra*, 241 F. Supp. at 562. Thus reliance on innocent sources of information involving no breach of duty is an essential element of the defense that the secrets were previously disclosed. *Servo Corporation of America v. General Electric Company*, 393 F.2d 551, 555 (4th Cir. 1968). Here, Krame

designed the C-seal dies for Advanced Products without any assistance from Sniegowski. In fact, Kramer did not even see Sniegowski's memorandum until after this action was brought. (JA 53a, 208a; AF 231; T 1090.)

Admittedly, certain Advanced Products' employees possessed some knowledge and experience in metal forming. But to the extent the Trial Court found that Advanced Products knew the secret of plaintiff's die, that Sommer had already decided to use such a die before hiring Kramer, and that Advanced Products had plaintiff's die design "on the drawing boards" prior to hiring Kramer, the Trial Court's findings were clearly erroneous.

### **III. THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT KRAMER DID NOT REVEAL ANY OF PLAINTIFF'S TRADE SECRETS TO DEFENDANT ADVANCED PRODUCTS**

Although the Trial Court made no findings in this area, it is indisputable that Kramer stood in a confidential relationship with plaintiff. The Trial Court erred in excluding evidence of a prior breach of confidence by Kramer. Plaintiff took reasonable precautions to safeguard the secrecy of its die, and Advanced Products knew that plaintiff considered its die confidential.

#### **A. Kramer Stood In A Confidential Relationship With Pressure Science.**

The gravamen of an action for wrongful appropriation of trade secrets is breach of a confidential relationship. In *Scha-voir v. American Re-Bonded Leather Co., supra*, 104 Conn.

at 475, the Connecticut Supreme Court, quoting Mr. Justice Holmes, said:

The word property as applied to trademarks and trade secrets is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith. Whether the plaintiffs have any valuable secret or not the defendant knows the facts, whatever they are, through a special confidence that he accepted. The property may be denied but the confidence cannot be. Therefore the starting point for the present matter is not property or due process of law, but that the defendant stood in confidential relations with the plaintiffs, or one of them. These have given place to hostility, and the first thing to be made sure of is that the defendant shall not fraudulently abuse the trust reposed in him. It is the usual incident of confidential relations. [Citing *E. I. DuPont de Nemours Powder Co. v. Masland*, 244 U.S. 100, 102 (1917).]

Although the Trial Court made no finding concerning the nature of Kramer's relationship with plaintiff stemming from his eighteen month term as plaintiff's production manager, there can be no doubt that Kramer stood in a confidential relationship with Pressure Science. He was a member of plaintiff's operating committee, and frequently met with plaintiff's board of directors. (JA 74a-76a; T 142-44.) Kramer himself stated that he had ranked number three or four in plaintiff's corporate hierarchy and that he was privy to policy-making decisions in the company. (JA 201a; T 1049.)

The Trial Court found that Kramer had not signed an employee agreement containing a clause relating to nondisclosure of plaintiff's proprietary information. (JA 26a; MD, F 27, 28.) The law is clear that this fact does not alter the controlling principle that an employee may not reveal to a third party

trade secrets of his former employer, the knowledge of which he obtained as a result of a confidential relationship. As the Connecticut Supreme Court said, in *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 319, 189 A.2d 390 (1963):

Trade secrets are the property of the employer and cannot be used by the employee for his own benefit. The lack of any express agreement on the part of the employee not to disclose a trade secret is not significant. The law will import into every contract of employment a prohibition against the use of a trade secret by the employee for his own benefit, to the detriment of his employer, if the secret was acquired by the employee in the course of his employment.

The Trial Court further noted that Kramer could not be prevented from practicing his trade by plaintiff's attempting to establish its "general experience and knowledge" as a trade secret. (JA 45a; MD at 27.) While the principle is unexceptionable, its application to the facts of this case is clearly erroneous. Here Kramer designed dies for Advanced Products, the secret of which he had learned as plaintiff's employee. (JA 208a, 210a-212a; T 1090, 1092-94.) And neither Kramer nor Sommer could identify any other use of such a die. (JA 53a, 55a; AF 232, 275.) Knowledge of trade secrets or other confidential information obtained by an employee during his employment cannot thereafter be used for his own advantage to the injury of the employer. *Allen Mfg. Co. v. Loika, supra*, 145 Conn. at 415.

### B. The Trial Court Erred In Excluding Evidence Of Kramer's Prior Breach Of A Confidential Relationship.

At trial Kramer claimed that no one at Pressure Science had ever expressly told him that the C-seal process was confidential, and that, therefore, he "assumed" that it was not. (JA 187a; T 1027.) At this point, plaintiff's counsel attempted to introduce evidence of a prior civil suit which had been brought against Kramer by the Raytheon Company for conversion of certain of that company's proprietary materials. (JA 49a-51a; RA 47, 51.) The purpose of the offer was to show that Kramer could not have reasonably made such an "assumption" in regard to the Pressure Science C-seal process by mistake or accident. (JA 196a, 204a; T 1036, 1067.) The Trial Court sustained an objection to the evidence on the ground that it was "tenuous and remote." (JA 204a-205a; T 1067-68.)

The Trial Court erred in excluding this evidence. Although the Federal Rules of Evidence (§404(b)) were not yet effective at the time of trial (JA 196a-197a; T 1036-37.), this Court has held that evidence of other crimes, wrongs or acts may be admissible for the purpose sought here. *United States v. Canniff*, 521 F.2d 56, 568, (2d Cir. 1975), *cert. denied* — U.S. —, 96 S. Ct. 796 (1976); *United States v. Deaton*, 381 F.2d 114, 117 (2d Cir. 1967). It seems clear that evidence that Kramer had been previously sued for a similar wrong would make less probable the genuineness of his claimed "assumption" than would be the case had he not been previously embroiled in such an action. Inasmuch as this was a civil action and a bench trial before an experienced District Judge, the likelihood of any prejudicial effect of the evidence

outweighing its probative value was indeed remote. Particularly in light of the weight which the Trial Court accorded to the fact that Kramer had not executed a nondisclosure agreement with plaintiff, the exclusion of this evidence was error.

**C. The Details Of Plaintiff's Die Design Were Kept Confidential By Pressure Science, And Defendant Advanced Products Knew Such Information Was Considered Confidential.**

Concerning plaintiff's security measures taken with respect to its proprietary information, the Trial Court found that tours of plaintiff's plant were conducted by supervisory personnel, and as a general rule, visitors could not obtain a detailed view of plaintiff's C-seal production process. (JA 25a; MD F 23.) The Trial Court also found that plaintiff used proprietary warnings on drawings of certain of its products sent to customers, but that plaintiff's drawings of C-seals sent to customers did not contain such warnings. (JA 25a; MD, F 24, 25.) What the Trial Court omitted from the latter finding, however, was the fact that plaintiff's C-seal drawings sent to its customers do not contain any proprietary information. (JA 52a; AF 43, 44.)

The Trial Court further found that plaintiff had "no routine procedure" for informing employees of any proprietary process until 1974, and that Robert Russell, a former shipping clerk and production expeditor for plaintiff had not been advised that plaintiff's C-seal process was confidential, although he understood the "basic elements" of the process and knew the identity of plaintiff's suppliers. (JA 26a; MD, F 29, 30.) However, Russell was not an engineer, and from his testimony it was

apparent that he did not possess adequate skill to design one of plaintiff's dies for a competitor. (JA 557a, 567a-568a; T 2592, 2602-03.) The Trial Court also noted, in the "Discussion" portion of its Memorandum of Decision, that prior to June 1973, two large glass sliding windows were located along the rear of plaintiff's plant which provided an uninterrupted view of the manufacturing process, and concluded that apparently plaintiff did not make "significant efforts" to maintain the secrecy of its C-seal manufacturing process. (JA 41a, 42a; MD at 23, 24.) But the evidence does not support the Trial Court's observation that the windows provided an "uninterrupted view" of plaintiff's C-seal operations. (JA 148a-151a; T 909-12.) Moreover, these windows faced a wooded area owned by plaintiff. (See PX 9, 11b.)

The law is clear that the owner of a trade secret need not maintain it in total secrecy. Reasonable precautionary measures are all that the law requires. *Allen Mfg. Co. v. Loika, supra*, 145 Conn. at 516. The owner of a trade secret may, without losing his protection, communicate the secret to employees or to others who are pledged to secrecy. *Town & Country House & Homes Service, Inc. v. Evans, supra*, 150 Conn. at 319. The evidence showed that only twelve of plaintiff's employees, in addition to Kramer, had knowledge of plaintiff's C-seal process in its entirety. (JA 138a-140a; T 894-96.)

In *Allen Mfg. Co. v. Loika, supra*, the plaintiff's process was installed in an ordinary production department, visible from the street, without being specially segregated or guarded in any way. Moreover, during the time the defendants were in plaintiff's employ, plaintiff never requested any of its employees to keep secret or confidential the details of its process. But no

competitor of the plaintiff was permitted to view the process in operation. The Connecticut Supreme Court upheld the Superior Court's finding that plaintiff had taken reasonable measures to maintain the secrecy of its process. 145 Conn. at 516. And, in *Plastic & Metal Fabricators, Inc. v. Roy*, 163 Conn. 257, 268, 303 A.2d 725 (1972), the Connecticut Supreme Court held that the plaintiff had not abandoned his secret, although an exhibit which revealed plaintiff's process was attached to plaintiff's pleadings which were in the clerk's file. The court apparently felt it was significant that no evidence was offered "to show that through the plaintiff's action a competitor or member of the general public had discovered the secret of its process." *Id.* at 269. Similarly, in this case there was no evidence to show that the details of the Pressure Science die were ever divulged to a member of the general public or to a competitor, with the exception of Kramer's disclosures to Advanced Products. Perhaps the best evidence of the reasonableness of plaintiff's security measures is that fact that plaintiff kept its C-seal process secret for some fourteen years, until Kramer revealed it to Advanced Products. Even the most elaborate security precautions are likely to be ineffective against an employee bent on divulging trade secrets to a competitor.

There can be no doubt that Advanced Products was aware that the information it sought from Kramer was considered confidential by plaintiff. (JA 230a-231a, 391a; T 1223-24, 2225.) There is no support at law for the proposition that one may use another's trade secret, yet escape liability for such use by claiming, as did Hostage, that he did not "believe" the plaintiff's claim. Even had it not known that plaintiff considered its C-seal process confidential, Advanced Products could not es-

cape liability by its failure to make any inquiries of the plaintiff concerning Kramer's employment at Pressure Science:

Employees of sufficient caliber to be intrusted with important trade secrets are usually not hired without extensive enquiries regarding their prior business and technical experience. Such enquiries should reveal at least a strong likelihood that confidential relationships were present in the previous employment. . . . The courts take such common sense facts into consideration in determining whether defendant should be charged with knowledge of such prior relationship.

R. Ellis, *Trade Secrets*, §261, at 351 (1953). And in *Carter Products v. Colgate-Palmolive Company*, 130 F. Supp. 557, 573-74 (D. MD. 1955), *aff'd* 230 F.2d 855 (4th Cir. 1956), *cert. denied* 352 U.S. 843 (1956), the court said:

The basis of our decision that Colgate's action was wrongful is that Colgate knew, or must have known by the exercise of fair business principles, that the precise character of Fine's work with Snell [the consulting chemist] was, in all likelihood, covered by the agreement which Fine had with Snell not to divulge trade secrets, and that, therefore, Colgate was obligated to do more than it did towards ascertaining the extent to which Fine was, in fact, restricted in what he might disclose to Colgate. That it was wrong for Colgate not to go further than it did in this respect is confirmed by the very status of Fine when he came to Colgate. At that time Fine was a joint inventor and patentee of 'Rise.' In other words, Fine was willing to be, and was knowingly placed by Colgate in work that was in direct competition with the work in which Fine had shared at Snell's, resulting ultimately in his own patent. The very fact that Fine would do this should, *per se*, have raised in the minds of the representatives of Colgate, who arranged the employment

of Fine, a feeling that he was entering upon a rather strange employment under the circumstances. It, therefore, was not enough for Colgate to say that they would see that Fine lived up to the limitations imposed by his contract with Snell. The weight of the credible evidence discloses that Colgate was far from being sufficiently avid to ascertain what those limitations really were, and to have Fine live up to them.

In the words of a leading commentator on the law of trade secrets:

The teaching of the *Rise* case is that one cannot insulate against liability by studiously achieved ignorance. The defendant learned that lesson at the cost of several million dollars.

R. Milgrim, *Trade Secrets*, §5.04[2], at 5-70 (1975).

#### IV. SUMMARY.

This is a case in which plaintiff developed a relatively simple and economical method of producing a new product, the formed C-seal. The method gave plaintiff a distinct commercial advantage over its competitors. For some fourteen years, during which time plaintiff refined its manufacturing process and developed a market for the C-seal, plaintiff's process remained unknown to the trade. But within several months after plaintiff fired Kramer, because of its general dissatisfaction with his work and upon learning that he had fraudulently misrepresented his background and academic credentials in applying for employment as plaintiff's production manager, Advanced Products, which hitherto had produced no die-formed seals, was marketing die-formed C-seals, made under Kramer's direction and utilizing the same die developed by plaintiff.

The Trial Court, while initially convinced that plaintiff's die was a trade secret (JA 590a-591a, Transcript of Certain Comments for the Record, at 5-6.), ultimately ruled that neither plaintiff's process nor any part thereof was a trade secret. In so ruling, the Trial Court committed error by applying patent-analogy concepts of novelty and the "good mechanic" defense, principles which have been expressly discredited in trade secret litigation, thereby overlooking the key issues in this action — Kramer's breach of a confidential relationship and Advanced Products' inequitable means of learning plaintiff's C-seal process. Appropriate here are the court's words in *Fairchild Engine & Airplane Corp. v. Cox*, 50 N.Y.S.2d 643, 656-57 (Sup. Ct. 1944):

So here, "breach of faith and reprehensible means of learning another's secret" is the issue. To lose sight of everything else in pursuit of "prior art" — "the kind of novelty and invention which is a requisite of patentability" — is to become a fugitive from the premier if not the single issue to be apprehended and solved.

The defendant's reply that what he proposed to do does not concern a "secret," is contradicted by his own conduct and words. From the mass of testimony the transcendent fact emerges that the plaintiffs' process succeeded where others failed. No one else achieved the practical results these plaintiffs achieved. To retort that others might or could have done it, or were on the same track, does not alter or weaken the fact that the plaintiffs did do it. The plaintiffs' process "clicked."

\* \* \* \*

It is quite manifest that after this litigation was projected, the defendant commenced digging in the field of "prior art" to ascertain what had been done and written about bonding aluminum with ferrous metals. Conced-

edly, the field was not entirely virgin. But the plaintiffs' expenditure of time and money brought results not reached by others. Once we conclude that the work done under Cox's supervision was confidential, and that Cox threatens to breach the confidence, all else is of subordinate importance.

And decisions by the federal and state courts in Connecticut have underscored this precept:

There is undoubtedly . . . an important policy which "encourages employees to seek better jobs from other employers or go into business for themselves." . . . But there is also a policy which is designed to protect employers against improper disclosures of information which their employees have received in confidence and this policy may perhaps be receiving increased recognition in the light of the marked changes in the attitude of the law towards the need for commercial morality. . . . Our judicial decisions have faithfully sought to vindicate both policies by preserving to employees their unfettered right to leave their employment and use elsewhere their acquired skill and knowledge of the trade generally as distinguished, however, from any trade secrets imparted to them in confidence and which they must continue to honor as such.

*Sperry Rand Corporation v. Rothlein, supra, 241 F. Supp. at 564;*

*Allen Mfg. Co. v. Loika, supra, 145 Conn. at 517.*

### CONCLUSION

For the foregoing reasons, the judgment appealed from should be reversed and the cause remanded for an adjudication of plaintiff's claims for relief, upon such further proceedings as may be just under the circumstances, and in accordance with the applicable law.

Respectfully submitted,

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